

**State of California
Office of Administrative Law**

In re:
Department of Industrial Relations

Regulatory Action:

Title 8, California Code of Regulations

Adopt sections:

Amend sections: 16423

Repeal sections: 16450, 16451, 16452,
16453, 16454, 16455,
16460, 16461, 16462,
16463, 16464

NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION

Government Code Sections 11346.1 and
11349.6

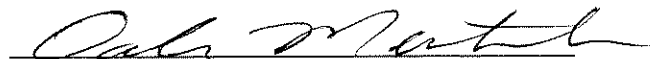
OAL File No. 2011-0422-01 EE

This emergency rulemaking action readopts for an additional 90 days the emergency amendment of section 16423 and the emergency repeal of Articles 1 and 2 of Subchapter 4.5 of Division 1 of Title 8 of the California Code of Regulations so as to continue to enable the sale of general obligation and lease revenue bonds to finance public works projects.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 5/2/2011 and will expire on 8/2/2011. The Certificate of Compliance for this action is due no later than 8/1/2011.

Date: 5/2/2011



Dale P. Mentink
Senior Staff Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

Original: John Duncan
Copy: John Cumming

STD. 400 (REV. 01-09)

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2011-0422-01EE
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

RECEIVED
 IN THE OFFICE OF
 2011 MAY -2 PM 2:07
Gene Bowen
 DEPUTY SECRETARY
 SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY
 Department of Industrial Relations

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER		PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Fee-based Compliance Monitoring by Department of Industrial Relations	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2010-1028-01E
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 16423
TITLE(S) 8	REPEAL 16450, 16451, 16452, 16453, 16454, 16455, 16460, 16461, 16462, 16463, and 16464
3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs., title 1, §44 and Gov. Code §11347.1) Notice of Proposed Extension of Emergency Action required under Gov't. Code sec. 11346.1(a) sent on April 14, 2011	
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____	
7. CONTACT PERSON John Cumming	TELEPHONE NUMBER (415) 703-4265
FAX NUMBER (Optional) (415) 703-4277	E-MAIL ADDRESS (Optional) jcumming@dir.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE
Christine Baker
 TYPED NAME AND TITLE OF SIGNATORY
 Christine Baker, Acting Director of Department of Industrial Relations

DATE
 4/20/2011

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED
 MAY 02 2011
 Office of Administrative Law

Subchapter 4. Labor Compliance Programs

Article 1. Operation of Labor Compliance Program and Contracts Subject to Labor Compliance Program Jurisdiction

* * *

§16423. Approved Labor Compliance Program Required by Statute.

(a) Whenever an Awarding Body is required by statute to enforce or contract to enforce a Labor Compliance Program that contains or meets the requirements of Labor Code section 1771.5, the Awarding Body must have its own program that has been approved by the Director pursuant to section 16425 below, unless it fully contracts out its responsibilities and decision-making authority to a third party program that has been approved by the Director pursuant to section 16426 below.

(b) The governing board of any Awarding Body that is required to enforce a Labor Compliance Program under subpart (a) above shall make a written finding that the Awarding Body has

(1) established its own Labor Compliance Program in accordance with the requirements of Labor Code Section 1771.5(b) and this subchapter; or

(2) has contracted with a third party that has been approved by the Director to operate a Labor Compliance Program in accordance with the requirements of Labor Code Section 1771.5(b) and this subchapter.

Copies of the finding required by this subpart (b) together with (A) notice of whether or not the Awarding Body intends to initiate and enforce its Labor Compliance Program for (i) all public works projects in which the Awarding Body participates, and (B) notice of any contract or agreement with a third party to operate a Labor Compliance Program shall be provided promptly to the Director and prior to certifying to any other entity that the Awarding Body has complied with the statutory requirement to have a Labor Compliance Program.

(c) For purposes of these regulations, an approved program refers to the entity that has applied for and received approval by the Director based on a consideration of the factors in sections 16425, 16426, or 16427 below, and not to that entity's manual or methodology for conducting

labor compliance enforcement.

(d) Unless otherwise required by statute, an Awarding Body is not required to have separate Labor Compliance Programs, and a third party Labor Compliance Program is not required to have separate approvals from the Director for different types of projects or funding sources, provided that (1) the Awarding Body has provided all notices required by subpart (b) above, (2) the Labor Compliance Program has timely filed all reports required by this subchapter, and (3) the Director has not otherwise limited the approved scope of operation for the Labor Compliance Program.

(e) The limited exemption from payment of prevailing wages provided by Labor Code Section 1771.5(a) shall *not* apply unless the Awarding Body initiates and enforces a Labor Compliance Program for all public works projects in which the Awarding Body participates.

(f) A list of statutes that require Awarding Bodies to have a Labor Compliance Program as a condition of project authorization, project funding, or use of specified contracting authority shall be maintained on the Department of Industrial Relations' website.

Authority cited: Section 1773.5, Labor Code. Reference: Section 1771.5, Labor Code.

* * *

Subchapter 4.5 Compliance Monitoring and Enforcement by Department of Industrial Relations [Repealed]

Article 1. Notices, Fees, and Fee Waivers. [Repealed]

§16450. Applicability. [Repealed]

NOTE: Authority cited: Sections 54, 55, 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.55, 1771.7, 1771.75, 1771.8, 1771.85, and 1771.9, Labor Code; and Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6 and 20919.3, Public Contract Code.

Extension of Emergency Regulation(s) Amending Text in Section 16423 and Deleting Regulations in Subchapter 4.5 of Chapter 8, Title 8, California Code of Regulations [4-14-11]

§16451. Notice of Projects Subject to Fees. [Repealed]

NOTE: Authority cited: Sections 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.55, 1771.7, 1771.75, 1771.8, 1771.85, 1771.9, 1773.2, and 1773.3, Labor Code; and Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3, Public Contract Code.

§16452. Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations. [Repealed]

NOTE: Authority cited: Sections 54, 55, 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.55, 1771.7, 1771.75, 1771.8, 1771.85, and 1771.9, Labor Code; and Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3, Public Contract Code.

§16453. Voluntary Payment of Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations in Lieu of Enforcing Labor Compliance Program. [Repealed]

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.7, and 1771.8, Labor Code; Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3, Public Contract Code; and Section 75075, Public Resources Code.

§16454. Payment of Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations by an Awarding Body that Elects to Comply with the Requirements of Labor Code Section 1771.55(a). [Repealed]

NOTE: Authority cited: Sections 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 1771.3 and 1771.55, Labor Code.

§16455. Fee Waivers; Exemption from Requirements of this Subchapter. [Repealed]

NOTE: Authority cited: Sections 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.55, 1771.75, 1771.85, and 1771.9, Labor Code; and Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3, Public Contract Code.

Extension of Emergency Regulation(s) Amending Text in Section 16423 and Deleting Regulations in Subchapter 4.5 of Chapter 8, Title 8, California Code of Regulations [4-14-11]

Article 2. Compliance Monitoring by Labor Commissioner [Repealed]

§16460. Establishment of Compliance Monitoring Unit. [Repealed]

NOTE: Authority cited: Sections 54, 55, 1771.55 and 1773.5, Labor Code. Reference: Sections 1726, 1741, 1771.2, 1771.5, 1771.55, and 1781, Labor Code.

§16461. Review of Payroll Records and other Monitoring and Investigative Activities of Compliance Monitoring Unit. [Repealed]

NOTE: Authority cited: Sections 54, 55, 1771.55 and 1773.5, Labor Code. Reference: Sections 90, 207, 226, 1771.5, 1771.55, 1773.2, 1775, 1776, and 1813, Labor Code.

§16462. Complaints. [Repealed]

NOTE: Authority cited: Sections 54, 55, 1771.55 and 1773.5, Labor Code. Reference: Sections 1741, 1771.55, and 1775, Labor Code.

§16463. Withholding of Contract Payments When Payroll Records are Delinquent or Inadequate. [Repealed]

NOTE: Authority cited: Sections 1771.55 and 1773.5, Labor Code. Reference: Sections 1729, 1771.5, 1771.55, 1742, 1775, 1776, and 1813, Labor Code.

§16464. Issuance of Civil Wage and Penalty Assessment upon Determination that Contractor or Subcontractor has Violated Prevailing Wage Requirements. [Repealed]

NOTE: Authority cited: Sections 1771.55 and 1773.5, Labor Code. Reference: Section 1741, Labor Code.